

BEFORE THE
WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION
WASHINGTON, D.C.
ORDER NO. 573

IN THE MATTER OF:

Served February 25, 1966

Application of Holiday Tours,)
Inc., for a Certificate of)
Public Convenience and Neces-)
sity ("grandfather").)

Application No. 18

Docket No. 31

By Order No. 554, issued December 29, 1965, the Commission denied the "grandfather" application of Holiday Tours, Inc., for a certificate of public convenience and necessity. On January 28, 1966, Holiday Tours, Inc., filed a petition for reconsideration of said Order, specifying twelve alleged errors.

No new matter has been raised. However, it appears that petitioner has misconstrued some of our findings and the reasons leading to those findings. Therefore, it is appropriate to make some supplemental comments.

Because of the questions raised in the court opinion, the Commission felt that fairness to all parties required the opportunity for them to present any pertinent evidence not previously adduced. The applicant was the beneficiary of this ruling as well as the protestants. That it did not or could not gain from the ruling does not give it ground to complain.

Applicant remains unable or unwilling to recognize the distinction found by the Commission between the transportation service it rendered when it sold tickets and operated its limousine service, and the transportation service rendered for it by the chartering carriers. We have recognized that Holiday Tours was engaged in a bona fide transportation service, but only when said service was operated by it in its limousine vehicles. This service did in fact require advertising, sales of individual tickets, and tours conducted openly and without concealment, in vehicles owned by and identified as belonging to the applicant. We cannot tell from the record, since no patron testified, whether the patron wanted or desired his tour in a limousine or a bus. But that is immaterial. In most cases, the patron was in fact transported by the applicant in its limousine. Occasionally, as noted, patrons were transported by the chartering carrier in the chartering carrier's vehicle. As we have found, that transportation was performed by an authorized carrier. There was no bus transportation by the applicant, bona fide or otherwise. The only bus

operations actually conducted were by an authorized, certificated carrier. Applicant's own evidence (Exhibit No. 1) reveals the carrier's (Atwood's Transport Lines, Inc.) state of mind, i.e., that it, Atwood, was the person engaged in the bus transportation, and was not merely a lessee or agent of the applicant. The law does not contemplate giving a "grandfather" certificate to one engaged in selling sightseeing tours, but to one who was "bona fide engaged in transportation." Holiday Tours could have sold a million tickets a year, but unless it was engaged in performing bus transportation, it would not be entitled to a certificate. The Commission's finding of applicant's respect for the law was directed to two distinct phases: first, the sightseeing service of the applicant using limousines, and second, the fact that applicant did not operate its own buses, which would have been illegal, but rather chartered the buses from authorized carriers, which was legal. (See testimony of Mr. Clarke, Transcript pp. 165-66).

The petitioner for reconsideration relates: "It is difficult to comprehend why the Commission placed such great weight on the testimony of Clarke...and placed so little on what four witnesses did remember in 1958."

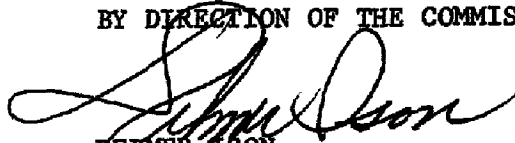
"The only purpose in adducing testimony from the four witnesses was to show that at one time apparent misinformation was emanating from the Commission (I.C.C.)." That may have been applicant's purpose, but the testimony has much broader relevance than that. While Clarke stated that he did not recall Davis, he emphatically denied that he had ever informed anyone that I.C.C. authority was not required. To the contrary, he said it would have been illegal to operate without a certificate or under the commercial zone exemption. Applicant's witnesses confirmed Clarke's testimony--indeed two of them related that they stopped bus operations specifically because Clarke told them to stop. This event occurred in 1958. Thus, at the very time Davis was beginning Holiday Tours, the I.C.C. was moving to stop illegal operations. We could not give any credibility to Davis' self-proclaimed state of mind. Applications cannot be granted upon one's proclaimed state of mind, even where the testimony is credible. As we have previously stated, the facts adduced point to one thing: Holiday Tours was operating an exempt limousine sightseeing transportation service only.

Cross-examination of Mr. Clarke clearly reveals that the I.C.C. representative considered the bus transportation to be that of the certificated carrier where a limousine sightseeing operator chartered one of its vehicles. Not only could the bus company be instructed as to start, stop, pickup, and discharge--"that is usually what they do on charters." (Tr. 166). It is readily apparent that the certificated carrier was the person engaged in the bus transportation.

The Commission is of the opinion and finds that its Order No. 554 was correct in every respect and that the application of Holiday Tours, Inc., for reconsideration of said Order should be denied.

THEREFORE, IT IS ORDERED that the application of Holiday Tours, Inc., for reconsideration of Order No. 554 be, and it is hereby, denied.

BY DIRECTION OF THE COMMISSION

A handwritten signature in dark ink, appearing to read "Delmer Ison", is written over the typed name.

DELMER ISON

Executive Director